



Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2253
- Site address: Land 2,180 metres SE of Challenger Lodge, Tomich, Cannich
- Appeal by Vento Ludens Limited against the decision by Highland Council
- Application for planning permission 20/05073/FUL dated 18 December 2020 refused by notice dated 27 April 2021
- The development proposed: Temporary siting (5 years) of a meteorological mast
- Application drawings: Plan 1 001 Location Plan – Met Mast Layout Plan (amended), Plan 2 CP1716-200 REV C General Plan, Plan 3 001 Location Plan, Plan 4 001 Location-Site Layout Plan – Met Mast
- Date of site visit by Reporter: 15 September 2021

Date of appeal decision: 17 December 2021

Decision

I allow the appeal and grant planning permission subject to the six conditions listed at the end of the decision notice. Attention is drawn to the nine advisory notes at the end of the notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan in this case comprises the Highland-wide Local Development Plan 2012 and the Inner Moray Firth Local Development Plan 2015.
2. The council's decision notice refers to Highland-wide policies 28 Sustainable Design and 55 Peat and Soils. In brief policy 28 is an overarching policy supporting developments that enhance the social, economic and environmental wellbeing of the people of Highland, including visual impacts. Policy 55 seeks to protect peat reserves, with development proposals demonstrating how they have avoided unnecessary disturbance, degradation or erosion of peat and soils. Unacceptable disturbance of peat will not be permitted unless adverse effects are outweighed by social, environmental or economic benefits from the development.
3. Having regard to the provisions of the development plan, the submissions before me and my site inspection, the main issues in this appeal are the visual impact of the proposal on the character of the area including on the area around Knockfin, recreational paths, and the nearby Tweedmouth Memorial, and whether the avoidance or unnecessary disturbance of deep peat has been demonstrated.

The proposal

4. The proposed development is the erection of a meteorological mast for a limited period of five years. The mast would have a total height of 101.6 metres. It would collect meteorological data about the wind resource including speed, direction, air pressure and temperature.
5. The mast would consist of tubular sections of 3 metres length in a triangular plan form. It would be supported by sets of guy wires secured to the ground by anchor blocks extending outwards to a radius of 60 metres. A lightning rod would be located at the top of the mast to protect against any potential lightning strikes.
6. There would be meteorological measurement instruments installed on the tower, namely:
 - five anemometers at heights of 60, 80 (two), 97.6 and 101.6 metres;
 - two wind vanes at heights 60 and 97.6 metres; and
 - environmental sensors for temperature/humidity, temperature and pressure.
7. The proposed site is located 2.1 kilometres to the south-east of Challenger Lodge at Tomich, and some seven kilometres south-south-west of Cannich village. It lies one kilometre east of the Beaully to Denny 275 and 400 kilovolt overhead transmission line. The site itself is located on open ground that has been clear felled in recent years. Access is gained via a forestry track that winds through existing forest from the road approximately one kilometre south of Tomich. To the south of this access road, where it passes the site, is an extensive area of planted forestry in a fairly large block some 1.5 kilometres wide running south-west to north-east about six kilometres in length.
8. At my accompanied site inspection it was found that the exact site indicated on the original application did not accord with that shown on the appellant's hand held GPS locator, the latter being about 30 metres to the east. I subsequently made a further information request seeking clarification of the siting. In response the appellant acknowledges that the original application 110 metre radius circular red site boundary is not centred on the now proposed location of the met mast. The new location is shown on the appellant's appendix 2 plan of its response to my request. The appellant considers it remains valid because it still encompasses the placement of component infrastructure. I accept this view.
9. One consequence of this, however, is that the new location of the mast closer to the boundary of the appeal site means the normal 50 metre radius micro-siting area would be partially outwith the application site. The area of the micro-siting circle outwith the boundary would therefore not have planning permission and this would reduce the scope for locating the proposed mast. The appellant's appendix 2 plan shows a micro-sited location closer to the centre of the circle, thus ensuring the guy wires would be within the permitted boundary. For certainty this could be controlled by condition in the event the appeal being granted.

Landscape and amenity

10. The key points in the Council's decision notice concerning policy 58, as referred to above, are the excessive height of the proposed mast with resulting undesirable visual prominence from the area around Knockfin and at the entrance to Glen Affric, together with the disparity in height with the Tweedmouth memorial on Beinn Mhòr.
11. The council's report of handling notes that although the proposed mast would be tall, it would have a relatively slender profile, with its widest face being only 0.35 metres across. The report notes that the site does not lie within or next to any landscape designations considers. It adds that the nearest road is 2.2 kilometres away at Tomich and that popular visual receptors such as the Glen Affric Corbetts and Munros are at least seven kilometres to the north, north-west and west and the closer Dundreggan hill tops at least 3.3 kilometres to the south-east, south and south-west. It concludes that the installation of a lattice meteorological mast would be unlikely to have a significantly adverse impact on the landscape as a visual resource.
12. The council's south planning applications committee disagreed with this and considered the proposed mast would create significant adverse visual effects which would detrimentally impact on receptors such as recreational users of surrounding paths. Other parties emphasise the proximity to the network of paths in the area, including core paths, and the proximity of the proposed site to the area around Knockfin and the entrance to Glen Affric.
13. The presence of this network of footpaths is acknowledged by the appellant. As well as the Affric-Kintail long distance route there are several core paths and the council has emphasised the need for these to be kept open in the event of planning permission being granted. Other parties have referred to a wider network of paths, including those at Plodda Falls. The latter network lies some four kilometres south-west of Tomich at the end of a forest track where there is a public car park which was relatively full at the time of my late afternoon site inspection, including by camper vans. It also lies within the Glen Affric National Nature Reserve. This area is part of a relatively large forest and parties have drawn my attention to felling proposals in the next few years that would open up views towards the appeal site and especially the proposed mast.
14. The appellant's zone of theoretical visibility shows the full height of the mast would be visible from a relatively small area in the immediate vicinity of the site as well as a much wider area to the west and north-west on the far side of Glen Affric. These are generally over seven kilometres away as noted in the report of handling's comments referred to above. Other intervening areas would have more restricted views showing the upper parts of the proposed mast.
15. I am in no doubt that there would be an adverse visual impact if the proposed mast is erected. The Beauly to Denny high voltage transmission line runs close to the appeal site to its west, as referred to above, and this is also detracts visually from the wider area. There would also be impacts on the users of the wide network of paths. That said, taking into account the various viewpoints I visited in the wider area following my accompanied site inspection, including those referred to in the council's reasons for refusal, I do not consider the adverse impact of the slender mast would be such as to justify the refusal of planning permission.

The Tweedmouth Memorial

16. The council also refers specifically to the Tweedmouth Memorial in its reasons for refusal. This is located on the summit of Beinn Mhòr and at a distance of 2.1 kilometres from the appeal site is clearly visible from it. Although it is prominent it does not, in my opinion, dominate the wider landscape, as stated by third parties. The council's paper in response to the appeal refers to the memorial as a category B listed building and cites document THC4, but this is incorrect. The document THC4 (wrongly labelled as THC3) is the citation for the Tweedmouth Memorial *Fountain* (my emphasis), which is a category B building located on the east side of the road just south-west of Tomich. Erected in 1910 it has its back to rising ground and faces across the road and is dedicated to the 1st Lord Tweedmouth and his wife Isobel who lived in the area from 1854 to 1905 and built the village of Tomich. There is no sight of the appeal site from the fountain and it has no relationship to it.

17. The Beinn Mhòr Monument is also dedicated to Lady Tweedmouth and her husband. Although the proposed mast would be clearly visible from the monument I do not consider the latter would lose its prominence. Its location on Beinn Mhòr at a level nearly 130 metres higher above ordnance datum would continue to give it prominence despite its overall height being nearly 50 metres lower than that of the proposed mast. Again I do not find the impact of the proposal on the monument to be of such significance as to justify the refusal of planning permission.

18. Taking all these points together I find the proposed development does not accord with policy 28 because of the adverse impact it would have on landscape and the users of footpaths in the vicinity of the appeal site. As this adverse impact would be small I do not consider it would be to an extent that would justify the refusal of planning permission.

Peat

19. The council's second reason for refusal refers to policy 55 and states the proposal does not demonstrate avoidance and/or unnecessary disturbance to deep peat. The Scottish Government Energy Consents Unit Best Practice Guide for Proposed Electricity Generation Developments, 2nd Edition 2017 classifies deep peat as a peat soil with a surface organic layer greater than one metre in depth.

20. The depths recorded by the appellant in its surveys vary, with between 1.01 and 1.5 metres being described in the original application. Figure 13 submitted with the second location shows depths as being generally between 0.1 and 0.71 metres. Interpolated depths over most of the application site are below 0.5 metres but these rise to over one beyond the west part of the site, although the application boundary is not recorded on that plan. Third party tests around the potential site shown on the Microsited Met Mast Location drawing show depths in excess of one metre to the west of the mast location and these have not been challenged.

21. Whilst it may be the case that deep peat is found on the site the proposed development is not, however, one that requires a significant amount of peat excavation. The proposed mast would be located on a plinth formed of a temporary timber raft base. The total excavated peat to form this would have a volume up to some 2.3 cubic metres of

soil. The six guy anchors would be buried but no concrete or permanent fixings would be required.

22. Under these circumstances I find the proposed development has demonstrated how it has avoided unnecessary disturbance of the peat layer and is therefore in accordance with policy 55.

Other development plan matters

23. No other matters are referred to in the council's reasons for refusal. The council's report of handling refers to protected species, access and road infrastructure and air safety. None of its consultation responses on these matters have revealed any areas of concern and I have no evidence before me to suggest otherwise.

Other material considerations

24. Scottish Planning Policy is supportive of developments related to renewable energy, although it does not deal specifically with meteorological data recording masts. A number of third parties see the proposed development as a precursor to a windfarm application. Whilst this may be a possibility development proposals must be looked at on their own merits. It does not necessarily follow there would be a wind farm application on the appeal site. In any event such a future proposal would be examined on its own and judged accordingly. Such considerations do not affect my determination of this appeal.

25. Following consultations Strathglass Community Council objected to the proposals on grounds relating primarily to landscape and amenity issues affecting natural, built and cultural heritage, tourism and local residences. 140 timeous representations were received by the council. A further 61 were received direct to DPEA from organisations and individuals both in the area and farther afield, including numerous submissions from Glen Affric Friends Say No. The majority objected to the proposals and grounds that have been considered above.

Conditions

26. The council's report of handling proposed six conditions to be imposed in the event of planning permission being granted. The appellant states that these do not include a reference to peat restoration and that it would be happy for such a condition to be included. I note there is in effect a reference to this by default in condition 1 but I have adjusted this to provide a clear reference to peat.

27. The council referred in its appeal response to these conditions in the report of handling. It stated however that because it was opposed to the proposed development it would not comment on the conditions.

28. I have considered the conditions carefully and find they are in accordance with circular 4/1998 on the use of conditions in planning permission. Subject to minor editing and adjustment noted above I have adopted them for my determination.

Conclusion

29. I therefore conclude, for the reasons set out above, that while the proposed development does not accord overall with the relevant provisions of the development plan, the departure is not so significant as to justify the refusal of planning permission.

30. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Trevor A Croft

Reporter

Conditions

1. Planning permission is hereby granted for a temporary period only and shall cease to have effect five years from the date of this permission (the 'cessation date'). Prior to the cessation date, the application site shall be cleared of all development approved under the terms of this permission (including any subsequent ancillary works, infrastructure, fixtures, fittings and any temporary developments permitted under Class 14 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended)) and reinstated to a condition comparable with that of the adjoining land, to the satisfaction of the planning authority. For the avoidance of doubt a scheme for the restoration of the site, including the peat environment, shall be submitted for the written approval of the planning authority by the end of the fourth year from the date of this permission. The site shall then be restored in accordance with the agreed scheme.

Reason: In recognition of the temporary nature of the proposed development, to enable the planning authority to reassess the impact of the development after a given period of time and secure removal and restoration.

2. The mast shall be fitted with a minimum intensity 25 candela omni-directional red flashing light or equivalent infra-red light fitted at the highest practicable point of the structure.

Reason: To ensure that the mast is visible to aircraft to safeguard aeronautical safety.

3. Bird deflectors shall be fitted to all guy wires and be spaced evenly at 5 metre intervals. Stops or clamps shall be fitted to the guy wires to prevent the deflectors from sliding down the wires. The mast shall be regularly maintained to ensure the deflectors remain in place. Prior to the commencement of each bird breeding season in April the developer shall check over each guy wire to confirm that the bird diverters are in place and replace any missing diverters as necessary.

Reason: To make the guy wires more visible and thus reduce the risk of collision from birds and to ensure that the bird markers are effective for the lifetime of the development.

4. No development shall commence on site until the developer has notified the UK DVOF & Power lines at the Defence Geographic Centre with the following information:

- a) Precise location of development;
- b) Date of commencement of construction;
- c) Proposed date of completion of construction;
- d) The height above ground level of the tallest structure;
- e) The maximum extension height of any construction equipment; and
- f) Details of aviation warning lighting fitted to the structure(s)

Reason: To safeguard aeronautical safety.

5. The development is to be located at OS NGR 231219 824247, or micro-sited within a 50 metre radius of this point. For the avoidance of doubt any micrositing of any part of the development must be located within the red site boundary on the application plan.

Reason: To confirm the exact positioning of the development.

6. The access to the site including along part of the Core Paths IN05.07 and IN05.03/ Public Right of Way HI9 shall remain open and free from obstruction or encroachment before, during and on completion of the development.

Reason: To uphold public access rights.

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

Council advisory notes

Accordance with Approved Plans and Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to

adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action.



Ministry of Defence

UK DVOF and Power lines at: dvof@mod.gov.uk or post it to:
D-UKDVOF and Power Lines
Air Information Centre
Defence Geographic Centre
DGIA
Elmwood Avenue
Feltham
Middlesex
TW13 7AH

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity. Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at:

<http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2

Mud and Debris on Road

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Construction Hours and Noise-Generating Activities

You are advised that construction work associated with the approved development (including the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

Protected Species – Halting of Work

You are advised that work on site must stop immediately, and NatureScot must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from NatureScot: <https://www.nature.scot/professional-advice/planning-anddevelopment/planning-and-development-advice/planning-and-development-protectedspecies>

Directorate for Local Government and
Communities
Planning and Architecture Division:
Planning Decisions



T: 0131-244-7867
E: planning.decisions@gov.scot

Colin Mackenzie
GH Johnston Building
Consultants Ltd

yvonne@ghjohnston.co.uk

Our Ref: PPA-270-2241
Planning Authority Ref: 20/01728/FUL
21 December 2021

Dear Mr Mackenzie,

DECISION NOTICE

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 PLANNING PERMISSION APPEAL FOR PROPOSED CHANGE OF USE FROM EQUESTRIAN CENTRE TO HOLIDAY, LEISURE AND HOSPITALITY FACILITIES INCLUDING 13 LODGES, CAFÉ/SHOP, RECEPTION, LAUNDRY AND RESTAURANT ON LAND AT TREETOP STABLES, FEABUIE, CULLODEN MOOR, INVERNESS, IV2 5EQ (the 'proposed development') (20/01728/FUL)

1. This letter contains Scottish Ministers' decision on the above planning appeal by Inverness Paving Ltd.
2. The application for planning permission was made to the planning authority, the Highland Council, on 6 May 2020. Under the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2010 the appeal came into a class to be determined by a person appointed by Scottish Ministers, rather than by Scottish Ministers themselves. In exercise of the powers under paragraph 3(1) of Schedule 4 to the Act, Scottish Ministers directed, on 24 March 2021, that they would determine the case themselves. The reason given for the direction was the proposed development's potential impact on Culloden Battlefield, which is a nationally important battlefield.
3. The appeal was considered by written submissions and unaccompanied site inspections which took place on 30 June and 1 July 2021, conducted by Mr Christopher Warren, a Reporter appointed by Scottish Ministers for that purpose.

Victoria Quay, Edinburgh EH6 6QQ
www.scotland.gov.uk



Reporter's Recommendation and Scottish Ministers' Decision

4. The Reporter has recommended that the appeal be allowed subject to conditions. Scottish Ministers have carefully considered all the evidence presented and the Reporter's conclusions and recommendation. Scottish Ministers disagree with the Reporter's recommendation and refuse planning permission, for the reasons given below. A copy of the Reporter's report ('the Report') is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

The Reporter's Report

5. The Reporter's conclusions and recommendations are set out in Chapter 6 of the Report. The Reporter recommends that planning permission is granted subject to nineteen conditions.

Legal and Development Plan Context

6. Under the terms of section 25 of the Town and Country Planning (Scotland) Act 1997 all applications must be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case, the development plan comprises:
 - the Highland-wide Local Development Plan adopted in 2012 (HwLDP);
 - the Inner Moray Firth Local Development Plan adopted in 2015; and
 - associated supplementary guidance on a range of topics, adopted by The Highland Council.
7. The draft Fourth National Planning Framework ('NPF4') was issued on 10 November. Ministers give NPF4 limited weight in the determination of this application given its consultation draft status. National Planning Framework 3 and Scottish Planning Policy will remain in force until NPF4 is adopted.
8. With respect to any buildings or other land in a conservation area, Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. As the site is located within the Culloden Muir Conservation Area, Ministers have given special attention to this matter.
9. In addition to the development plan, several Historic Environment Scotland (HES) policy statements and guidance notes are relevant to the consideration of the proposal. These include the Historic Environment Policy for Scotland, and Managing Change in the Historic Environment: Historic Battlefields, which is a non-statutory guidance note.
10. The Reporter agreed with the Council's screening opinion that the proposed development does not require an Environmental Impact Assessment (EIA).

Proposal

11. The appeal is for the change of use and redevelopment of an existing riding centre to create a tourism and leisure facility. The proposal includes the creation of a 100 cover restaurant; 64 space carpark; playpark; and 13 self-contained holiday accommodation lodges positioned within an area of undeveloped mature Scots Pine woodland, which is the subject of a Tree Preservation Order (TPO). Five of these lodges would be located within an area of unauthorised hardstanding within the woodland. The lodges would be finished in timber cladding with 'green roofs' and accessed by raised boardwalk paths while the converted buildings on site would be finished in timber cladding, steel roofing and smooth white rendered panels. The site is situated in a semi-rural location within a mostly woodland setting approximately 1 km south-east of the settlement of Balloch and lies wholly within the Culloden Muir Conservation Area and the designated Culloden Inventory Battlefield.

Main Issues

12. Scottish Ministers consider that the main issues in this case are those identified by the Reporter and these are set out below. These will be considered in turn –

- The principle of a countryside location;
- The principle and effects of the development's location within an inventory battlefield and conservation area;
- The principle and effects of the development's location within woodland; and,
- Other relevant considerations.

The principle of a countryside location

13. Ministers agree with the Reporter in paragraph 2.34 that the appeal site is located outwith the development plan's defined settlement development areas, and is therefore classed as countryside in terms of the Highland-wide Local Development Plan (HwLDP), within the identified hinterland of Inverness. Ministers agree with the Reporter's consideration that the lodges and ancillary development (café/shop) should be assessed separately from the proposed restaurant, due to the nature and scale of the latter element. In considering the lodges, the Reporter notes that HwLDP contains a dedicated policy for tourist accommodation (Policy 44), which cross references Policy 35 'Housing in the Countryside (Hinterland Areas)' and the associated 'Housing in the Countryside and Siting and Design' supplementary guidance. The Reporter considers that policy 35 does not identify holiday accommodation of the type proposed as a potentially appropriate form of development in this countryside location. The Reporter concludes, in paragraph 2.43, that the overarching principle of the proposed tourist accommodation being sited within this hinterland area is in accordance with the 'Housing in the Countryside and Siting and Design' supplementary guidance and is appropriate, subject to the site being deemed to be suitable in all other regards.

14. Ministers have taken into account that the 'Housing in the Countryside and Siting and Design' supplementary guidance and the Housing in the Countryside Briefing Note 2016 have been superseded by the Rural Housing Supplementary Guidance (RHSG) adopted by the Highland Council on 10 December 2021, and which now forms part of the development plan. The guidance has been developed to fully accord with policies in the HwLDP. The superseded guidance stated that self-catering tourist let accommodation may be supported where accommodation relates to a clearly defined business opportunity relating to the development of tourism and supported by a business plan. The RHSG sets out criteria to support small scale tourist accommodation developments in the countryside. This criteria requires: that the premises complies with definition of tourist accommodation; that evidence is provided to demonstrate how the business is to be funded and how it will be financially viable and sustainable for a period of at least 5 years; and, a Site Selection Report that demonstrates the site has been selected in accordance with the Site Selection Sequential Approach (this considers if a sequentially preferable site is available).
15. In paragraph 2.42, the Reporter notes that the proposed development is accompanied by an outline business case, which identifies demand for the type of tourist accommodation being proposed in this location. The Reporter considers that while some of the predicted economic benefits appear rather ambitious, there is no reason to doubt that there is a strong business opportunity behind the proposed development. Overall the Reporter concludes in paragraph 2.50 and 6.2 that on balance, the proposed countryside location would sufficiently align with the provisions of the development plan.
16. Minister have taken into account that the new RHSG provides support to tourist accommodation development of this type. However Ministers consider that the lodge proposal and ancillary development are contrary to Policy 43 'Tourism' and Policy 44 'Tourist Accommodation', which provides criteria against which proposals for tourist accommodation and facilities will be assessed. Ministers do not consider that these elements of the proposed development can be achieved without adversely affecting the landscape character or the natural and cultural heritage features of the area.
17. Ministers consider the lodges would have a detrimental impact on protected woodland, which is the subject of a Tree Preservation Order (TPO) and important to the character, setting and amenity of the surrounding landscape. Ministers also consider the scale and nature of new lodges and ancillary development proposed would contribute to a suburbanising effect on its countryside location, and increase the density of development which is not in keeping with the existing character or appearance of the conservation area or the special qualities of the inventory battlefield.
18. The Reporter has considered the restaurant against wider locational principles outlined in the relevant local development plan that are applicable to a food and drink use. The Reporter notes, in paragraph 2.46, that the HwLDP pre-dates Scottish Planning Policy (SPP), and so does not fully reflect the expectations of SPP in relation to town centre uses. The Reporter finds that more fundamental

locational principles for this particular type of use are set by policy relating to ‘town centre’ uses in the Inner Moray Firth LDP Policy 1 (Promoting and Protecting City and Town Centres). The Reporter considers this broadly reflects the provisions of Policy 40 (Retail Development) of the HwLDP, but it applies to a wider range of uses beyond retail developments.

19. The Reporter concludes, in paragraphs 2.48-9 and 6.2, that the proposed restaurant is unlikely to adversely impact on the vitality and viability of identified centres and that the characteristics of the proposed development sufficiently align with the development plan and would complement the proposed lodges in terms of the appeal of the accommodation to visitors. However, in paragraph 6.3, the Reporter sets out that this is a matter that Ministers may wish to consider further, as it could legitimately be found that the restaurant component is of a sufficient scale in its own right to indicate that sequentially preferable locations should have been explored before proposing a location of this type.
20. The Reporter has not clarified the restaurant size in the report. The appellant notes (as stated in paragraph 2.15) that the restaurant would be 1,478 sq. m and the extent of retail floorspace proposed would extend to 10 sq. m. In paragraph 2.25 it is noted that the Council consider the restaurant would have 254 square metres of ‘net’ dining/drinking accommodation. In paragraph 2.47, the Reporter considers that the proposed restaurant would inevitably generate footfall and that trips would likely be predominantly car-based given its out-of-centre and countryside location. However, the Reporter does not consider this situation significant for a development of the scale proposed.
21. As noted in paragraph 2.48, Policy 1 ‘Promoting and protecting city and town centres’ of the Inner Moray Firth LDP states that developers should consider sites in identified centres where it would generate footfall (not only ‘significant’ footfall). However, the policy only presumes against development that is likely to have an adverse effect on the vitality and viability of identified centres. The Reporter considers that there is a degree of tension with this policy as alternative locations in defined centres have not been assessed. Ministers consider that the nature and scale of the 100 seater restaurant and 64 space carpark exceeds what is necessary to serve 13 lodges. Ministers consider that in view of its scale and operational impact within a countryside location, it cannot be clearly concluded that the restaurant proposals would have no adverse impact on identified centres. Ministers have not attached significant weight to the impacts in the decision.

The principle and effects of the development’s location within an inventory battlefield and conservation area

22. Ministers have taken into account that the Reporter has given weight and draws particular support from the position of Historic Environment Scotland (HES) in reaching his findings (paragraph 3.39). HES finds that the development would not have a significant effect upon the battlefield given its relative position in relation to the core battlefield and its woodland setting. HES set out that their decision not to object should not be taken as support for the proposals and that the appeal should

be determined in accordance with national and local policy on development affecting the historic environment, together with related policy guidance.

23. Scottish Planning Policy (SPP) requires planning authorities to protect, conserve and where appropriate, enhance the key landscape characteristics and special qualities of sites in the Inventory of Historic Battlefields. Policy 57 'Natural, built and cultural heritage' of the HwLDP states, amongst its provisions, that for features of national importance, development will be allowed where it can be shown not to compromise the natural environment, amenity and heritage resource and where there may be significant adverse effects these must be outweighed by social or economic benefits of national importance. The Historic Environment Policy for Scotland (HEPS) sets out the need to ensure that decisions affecting the historic environment are informed by an inclusive understanding of its breadth and the cultural significance of the heritage asset. HEPS is supported by HES guidance notes including 'Managing Change in the Historic Environment: Historic Battlefields'. That guidance note sets out the importance, when assessing proposals, of identifying less tangible values such as the contribution that a battlefield can make to a sense of place or cultural identity, noting that these issues can be appreciated at a local, national and even international level. Ministers consider that the area has high sensitivity to new development due to the national historic significance and cultural associations of the battlefield, as well as the rural character of the area.
24. Ministers do not agree with the Reporter's view in paragraphs 3.49 and conclusions in 6.5-7 that the proposal would not have a significant adverse impact on Culloden Inventory Battlefield or on the character or appearance of the Culloden Muir Conservation Area. Ministers also disagree with the Reporter's view that the proposal would comply with Policy 57 and the 'Highland Historic Environment Strategy' Supplementary Guidance.
25. Ministers disagree with the Reporter's finding in 3.49 that the partly developed nature and commercial use of the appeal site as an equestrian centre limits the magnitude of change that would arise from the proposed development. Ministers have taken into account that several of the existing buildings on the site would be removed or altered to facilitate the development. This includes the substantial alteration and extension of an existing single storey stable building to form a 2-storey 100 cover restaurant with associated 64 space car park and playpark. The proposed restaurant will have a terrace and contains large areas of glazing that mean the restaurant will be visible during the day and night. Ministers consider that the conversion of these existing buildings and the significant expansion of the existing stable building to a restaurant is not proportionate to its local landscape context within an historic battlefield. Ministers do not consider that the nature and scale of the major development proposed can be absorbed into an area characterised by sporadic individual farming properties in open countryside. Ministers consider that the nature and scale of the development proposed would have a suburbanising effect on the site and would cause a high level of harm to the significance that the battlefield draws from its rural setting, a key component of its significance and character.

26. The Reporter considers, in paragraph 3.43, that the applicant's visual impact assessment demonstrates that the development would not have any significant effects upon the battlefield designation, or upon the appearance of the conservation area more widely. The Reporter finds, in paragraph 3.49, that the development would be discreetly located where it would not be widely visible. Ministers consider that the extent to which the development will be temporarily visible during various tree felling and potential restocking phases means that the visual impacts predicted would have a degree of uncertainty. Ministers have also taken into account that the visual impact assessment did not include an assessment of the proposed restaurant building and the ancillary development in its immediate or wider location. The applicant's visual assessment concentrated on the impacts of the lodges and did not take into account the impacts of the restaurant building. Ministers consider that the proposed development is inconsistent with the Council's own visual setting assessment which accompanies the Culloden Muir Conservation Area Appraisal and Management Plan. This document states on page 51 paragraph 10.6 that 'changes in the proposed conservation area should be limited to low density, small scale development of a quality and design in keeping with its existing character.'
27. The proposed development would increase the number of buildings visible (from Feabuie Road and the north-east corner of the designated battlefield) within the surrounding undulating agricultural and battlefield landscape. In this area it remains possible to appreciate the former marshland topography over which the Government troops may have advanced. The landscape of the whole battlefield makes a major contribution to the ability to inform about the battle events and related terrain and thus it contributes directly to the cultural significance of Culloden. Ministers consider that new development of this nature and scale could alter how the battlefield's wider setting would be perceived. Ministers consider that while the Reporter has focussed on the setting and visibility impacts of the proposed development within the more sensitive parts of the battlefield, he has not fully considered the impacts on the cultural significance of the whole battlefield, its special qualities and the open landscape characteristics of the site. Ministers consider that the proposed development would not be in keeping with the character of the conservation area nor with the special qualities of the inventory battlefield. Instead, it would reduce the ability to appreciate the course of the battle within this wider area.
28. Ministers consider that the nature and scale of the proposed development would have suburbanising effects would result in cumulative negative impact on the special qualities, sense of place and character of the area apparent to many visitors to the inventory battlefield. As such, Ministers consider the proposed development is contrary to SPP, HwLDP Policy 57, HEPS and the HES Historic Battlefields guidance.

The principle and effects of the development's location within woodland

29. The development plan contains a strong presumption in favour of protecting woodland. HwLDP Policy 52 'Principle of development in woodland' sets out that development proposals (of wooded sites) will only be supported where they offer

clear and significant public benefit. This presumption is strengthened in the accompanying Trees, Woodland and Development Supplementary Guidance which identifies all trees protected by a tree preservation order (TPO), such as the woodland area within the appeal site, as features of national importance.

30. Ministers have taken into account that an area of hardstanding has been formed, which involved the loss of protected woodland. The Council has identified the hardstanding as being unauthorised and this has not been disputed by the appellant. Ministers agree with the Reporter in paragraph 4.32 that the area of hardstanding is an incongruous intrusion into the wooded area. It is indicated in the Reporter's report that approximately 20 trees might have been removed. In paragraphs 4.35-7 the Reporter has taken into account the Trees, Woodland and Development Supplementary Guidance statement on page 11 that "an area which has recently been felled and awaiting restocking is still considered as woodland..". The Reporter considers that while tree restocking is not proposed, it is logical the same principle is applied and simply because trees have been felled it does not mean the site should not still be considered as woodland in policy terms. Ministers agree with the Reporter that the unauthorised hardstanding area should be considered part of the woodland in policy terms and that the proposed siting of five lodges on this part of the site would effectively result in the permanent loss of this part of the TPO woodland.
31. An arboricultural impact assessment that accompanied the planning application indicated that 24 out of the 446 surveyed trees would need to be removed. Of these, 8 need to be removed to accommodate development and 16 should be removed irrespective of whether development goes ahead. The assessment considers the direct impact of the development on existing trees would be relatively minor, but it is noted that several trees are in poor condition as a consequence of previous unauthorised construction or build-up of materials. The Reporter considers in paragraph 4.31 that while the minimal felling of individual trees is proposed, none of the trees which would require to be removed are individually important or in particularly good condition. Ministers disagree with the Reporter and consider that the incremental erosion of woodland together with the unauthorised hardstanding has a cumulative adverse impact on protected woodland.
32. Ministers disagree with the weight the Reporter has given, in chapter 6, to his judgment in paragraph 4.44 that the proposed development's delivery of potential improvements to the unauthorised part of the site, through reinstating the original contours of the land, and a requirement for compensatory planting, would in practice, be a more favourable outcome for woodland interests than if planning permission is refused.
33. Ministers consider that further development that results in permanent tree loss and incremental erosion of this protected woodland is unacceptable and contrary to development plan policies that seek to protect woodland within TPOs. Ministers consider that the positioning of five of the proposed lodges on unauthorised hardstanding would be contrary to HwLDP Policy 52 'Principle of development in woodland' and SPP which aligns with The Scottish Government's Control of Woodland Removal Policy and includes a presumption in favour of protecting

woodland. Ministers consider that while there would be economic and tourism benefits associated with the proposed development they are not of such significant public benefit that they would outweigh the harm to protected woodland of national importance.

Other relevant considerations

Siting, layout and design

34. For the reasons set out above, Ministers disagree with the Reporter's finding, in paragraph 5.5, that the siting, layout and design of the development would be appropriate and would accord with the relevant provisions of HwLDP Policy 28 'Sustainable design'; Policy 29 'Design quality and place-making'; and the associated Sustainable Design Supplementary Guidance. Ministers have taken into account that the lodges would be constructed of timber and the stilt legged, elevated design of the proposed lodges does seek to minimise the impact of development on the protected woodland. However, this does not override the principle in Policy 52 (principle of development in woodland) and the associated supplementary guidance that where woodland removal is proposed, compensatory planting will usually be required. The proposed development would be contrary to Policy 52 by allowing development in an area which has been subject to unauthorised development and further planned TPO tree loss to accommodate the lodges. Ministers do not consider that the size and scale of the proposed restaurant and ancillary development would make a positive contribution to the sensitive battlefield and countryside context. Overall Ministers do not consider that the siting and layout of proposed development is in keeping with the local character, its historic and natural environment assets and landscape setting.

Noise

35. Ministers agree with the Reporter, in paragraphs 5.10-11, that the development would be sufficiently distant from other residential properties to avoid it giving rise to any discernible increase in noise and disturbance from general activity and movements on the site. Ministers also agree that that a condition to control noise levels from ventilation, heating and other systems would be an appropriate safeguard.

Roads and traffic considerations

36. Ministers agree with the Reporter that suitable conditions could address the access, traffic and road safety concerns. However Ministers have taken into account that the proposed development is at a location which would increase reliance on the car.

37. In Chapter 5, the Reporter considers a number of other issues relating to this development in paragraphs 5.12 to 5.16 – Flooding and drainage; Habitats and protected species; and Archaeology. While Ministers agree that these issues could be adequately controlled and mitigated against by conditions, Ministers do not

consider that the principle of development is acceptable at this location for the reasons set out above.

Scottish Planning Policy

38. Paragraph 33 of Scottish Planning Policy (SPP) states that where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration. Decision-makers should also take into account any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the wider policies in this SPP. The same principle should be applied where a development plan is more than five years old.
39. As the Highland-wide Local Development Plan and Inner Moray Firth LDP are more than five years old, Ministers are applying the principle set out in paragraph 33 of SPP and regard the presumption in favour of development that contributes to sustainable development as a significant material consideration in this case. Paragraph 28 of SPP states that the planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost. SPP also sets out 13 principles which should guide policies and decisions.
40. In paragraph 4.39, the Reporter has taken into account the appellant's assessment in their outline business case, that the proposal is forecast to create 62 full-time equivalent jobs at the regional level and 69 nationally; and £1.47 million of gross value added annually for the Highland economy and £1.74 million annually to the national economy. Whilst the Reporter considers the job creation estimates appear quite high, he accepts them at face value as there is no evidence before him which would disprove the forecasts. In paragraph 4.40 the Reporter recognises that the proposed development appears to offer a strong commercial opportunity, but that it has not been demonstrated that it is required for the equestrian business to remain viable; nor has a clear case been made to show why the diversification argument should carry weight in the decision-making process.
41. Ministers consider that the proposed development would provide some net economic benefits and tourism/leisure opportunities and in those respects, would contribute to sustainable development as set out in SPP principles. Ministers consider the nature and scale of the proposed restaurant and ancillary development would result in intensification of use, increased car based development and suburbanisation in a countryside location and historic battlefield. Ministers consider the proposed development does not protect, conserve or enhance the cultural significance and special qualities of an Inventory of Historic Battlefields site and would promote unnecessary and an unacceptable scale of commercial activity within the boundary of Culloden Battlefield. The proposed lodges would also result in the further removal of trees and permanent loss of protected woodland of national importance covered by a Tree Preservation Order.

For the same reasons, Ministers consider that the proposed development does not support good design in a sustainable location or has regard to the sustainable land use principles.

42. Given those shortcomings, and even when taking into account the presumption in favour of development that contributes to sustainable development as part of this judgement, Ministers consider that the proposed development would not in overall terms, be a sustainable development, and would not represent “the right development in the right place” as expected by paragraph 28 of SPP. Ministers consider the adverse impacts of the proposed development as identified above significantly and demonstrably outweigh the benefits of the proposed development, despite the presumption in favour of development that contributes to sustainable development.

Overall Conclusions

43. Whilst recognising that unauthorised woodland removal has already taken place, Ministers conclude that the permanent loss of TPO woodland required to enable the proposed lodges and ancillary development is unacceptable. Based on the information available and the nature and scale of the proposed restaurant, Ministers consider that there is too much uncertainty concerning the principle of proposed restaurant’s out-of-centre location and potential impacts on identified centres. Ministers are unable to reach a view on whether it complies with Policy 1 of the Inner Moray Firth LDP and have attached little weight to these impacts in the overall decision. Ministers also consider the proposed development would have an suburbanising effect on the open countryside and detract from the character and appearance of the conservation area, the special qualities of the battlefield and sense of identity.
44. Scottish Ministers do not accept the Reporter’s conclusions, as set out in Chapter 6, that a departure from the development plan is justified. Ministers consider that the loss of protected woodland, together with the impacts on the historic environment assets of Culloden Inventory Battlefield and the Culloden Muir Conservation Area mean the proposed development is contrary to the development plan overall. The material considerations, including the economic and tourism benefits, do not outweigh the identified significant and demonstrable adverse impacts, nor do they warrant a departure from the development plan.

Formal Decision

45. Accordingly, for the reasons given above, Scottish Ministers disagree with the Reporter’s recommendation and hereby dismiss the appeal and refuse planning permission for the ‘Proposed change of use from equestrian centre to holiday, leisure and hospitality facilities including 13 lodges, café/shop, reception, laundry and restaurant on land at Treetop Stables, Feabuie, Culloden Moor, Inverness IV2 5EQ’ in accordance with planning application ref: 20/01728/FUL dated 06 May 2020.

Right to Challenge

46. This decision of Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997, of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date of this letter. If such an appeal is made, the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.
47. A copy of this letter and the Reporter's report has been sent to The Highland Council. Those parties who lodged representations will also be informed of the decision.

Yours sincerely,

A black rectangular redaction box covering the signature of Fiona Simpson.

Fiona Simpson
Chief Planner

T: 0131-244-7867
E: planning.decisions@gov.scot

Colin Mackenzie
G H Johnston Building
Consultants Ltd

yvonne@ghjohnston.co.uk

Our ref: PPA-270-2241
Planning Authority Ref: 20/01728/FUL
21 December 2021

Dear Mr Mackenzie,

CLAIM FOR AN AWARD OF EXPENSES

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 PLANNING PERMISSION APPEAL FOR PROPOSED CHANGE OF USE FROM EQUESTRIAN CENTRE TO HOLIDAY, LEISURE AND HOSPITALITY FACILITIES INCLUDING 13 LODGES, CAFÉ/SHOP, RECEPTION, LAUNDRY AND RESTAURANT ON LAND AT TREETOP STABLES, FEABUIE, CULLODEN MOOR, INVERNESS, IV2 5EQ

1. I refer to your claim for an award of expenses, on behalf of Inverness Paving Ltd against The Highland Council, in respect of the above planning appeal. This letter contains Ministers' decision on that claim for expenses.

Consideration by the Reporter

2. I attach a copy of the Reporter's report which sets out the background to the claim and the Reporter's reasoning, conclusion and recommendation.

Ministers' Decision

3. It is normal practice in planning appeals that all parties are expected to meet their own expenses unless one party can be shown to have acted unreasonably, vexatiously or frivolously. In considering whether an award of expenses might be made on the grounds of unreasonable behaviour, the main criterion is whether one party has been put to unnecessary expense. Further information can be found in Circular 6/1990 at the following link: [Circular 6/1990 \(webarchive.org.uk\)](http://www.webarchive.org.uk).

4. After careful consideration of the detail set out in the Reporter's report, Ministers agree with the Reporter's reasoning and conclusion and accept the recommendation that the Council has not acted in an unreasonable manner and should not be liable for expenses incurred. The claim for an award of expenses made by Inverness Paving Ltd is, therefore, dismissed and Ministers decline to make any award.

5. A copy of this letter and the report have been sent to The Highland Council.

Yours sincerely,



Fiona Simpson
Chief Planner

Directorate for Local Government and
Communities
Planning and Architecture Division:
Planning Decisions



T: 0131-244-7867
E: planning.decisions@gov.scot

Sent by email to :

MRH Design
info@mrhdesign.co.uk

Our Ref: PPA-270-2239
Planning Authority Ref: 20/04611/FUL
21 December 2021

Dear Mr and Mrs Hornby,

DECISION NOTICE

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 PLANNING APPEAL: CHANGE OF USE AND CONVERSION OF STEADING TO FORM PRIVATE DWELLING - LAND 120 METRES SOUTH-WEST OF CULCHUNAIG FARMHOUSE, WESTHILL, INVERNESS (20/04611/FUL)

1. This letter contains Scottish Ministers' decision on the above planning application submitted to The Highland Council by Mr Mark Hornby, MRH Design on 23 November 2020.
2. The appeal was recalled for Scottish Ministers' determination on 22 March 2021. The appeal was considered by means of written submissions and an unaccompanied site inspection which took place on 3 May 2021, conducted by Mr Steve Field, a Reporter appointed by Scottish Ministers for that purpose. A copy of the Reporter's report ("the report") is enclosed.

Proposal

3. The application is for the proposed change of use and conversion of a derelict, but substantially intact, traditional farm steading at Culchunaig, to form a single house. The site is surrounded by agricultural land with the nearest property being Culchunaig farmhouse, located 120 metres to the north-east. The site is within the Inventory

Victoria Quay, Edinburgh EH6 6QQ
www.scotland.gov.uk



Battlefield of Culloden boundary and the Culloden Muir Conservation Area. The proposals have been revised from a previous scheme which was refused by Ministers in 2020, the main difference being a scaled back conversion of the main steading and the removal of all proposed outbuildings within the garden area due to their location and sensitivity within the core of the battlefield.

Reporter's Recommendation and Scottish Ministers' Decision

4. The Reporter's conclusions and recommendations are set out in Chapter 5 of the main report. The Reporter has recommended that planning permission be granted with conditions. Scottish Ministers have carefully considered the Reporter's report. They agree with the Reporter's overall conclusions and recommendation and adopt them for the purpose of their own decision. They, therefore, accept the Reporter's recommendation that planning permission should be granted subject to conditions.

Summary of Reporter's Findings

5. Ministers agree with the Reporter's findings and conclusions in Chapter 5 of the report that the proposed development accords with the Development Plan overall and there are no material considerations which would justify refusing planning permission. In relation to the Highland-wide Local Development Plan (HwLDP), the Reporter considers that the conversion and reuse of a traditional building would qualify as an exception to the presumption against new housing in the countryside, set out in Policy 35 Development in the Countryside (Hinterland Areas) and the associated Housing in the Countryside/Siting and Design Supplementary Guidance. Ministers also agree with the Reporter that through the use of conditions, the proposals comply with Policy 28 Sustainable Design and the associated Sustainable Design Guide; Policy 57 Natural, Built and Cultural Heritage; and supplementary guidance relating to physical constraints, developer contributions, travel, protected species, flood risk, waste water treatment and sustainable drainage.

6. Ministers have taken into account that the 'Housing in the Countryside and Siting and Design' supplementary guidance and the Housing in the Countryside Briefing Note 2016 have been superseded by the Rural Housing Supplementary Guidance (RHSG), adopted by The Highland Council on 10 December 2021, and which now forms part of the development plan. The guidance has been developed to fully accord with policies in the HwLDP. With regards to the conversion, reuse and replacement of traditional buildings, the RHSG has strengthened the importance the Council places on the protection, preservation and reuse of existing building stock to support their declaration of a Climate & Ecological Emergency. Ministers consider that the proposed development meets the relevant requirements of the RHSG, and remain of the view that it accords with Policy 35 of the HwLDP.

7. Ministers agree with the Reporter's conclusions that the proposals comply with Scottish Planning Policy, Historic Environment Policy for Scotland and Historic Environment Scotland's guidance note on Managing Change in the Historic Environment: Historic Battlefields.

8. Ministers agree with the Reporter's findings in paragraph 5.50 that whilst the battlefield is vulnerable to incremental change, it is not considered that the carefully executed restoration of an existing building could reasonably be said to contribute to an unacceptable cumulative impact with past, present or future development, or commercial planting. The Reporter also considers that the use of planning conditions would preserve the rural setting of the steading and they do not consider that the sensitive conversion would spoil the public experience of this part of the battlefield nor impact on key views or alter the character of the landscape or special qualities of the battlefield. Ministers agree with the Reporter's overall conclusions in Chapter 5 that the proposals would not have any significant adverse effects on the historic battlefield and would meet the statutory test of preserving or enhancing the character or appearance of the Culloden Muir Conservation Area.

Residential Permitted Development

9. In paragraphs 5.22-3 the Reporter has adopted the Council's condition that, if planning permission is granted, to protect the setting of the steading, a condition is used to ensure certain development cannot be undertaken on the property by virtue of permitted development rights. The Reporter has considered that some planning authorities use Article 4 Directions in tandem with conservation area designations to withdraw permitted development rights but there is no evidence to suggest that is the case in the Culloden Muir Conservation Area. The Reporter considers the appeal proposals to be an exceptional case and has applied a condition to protect the property from development carried out under permitted development rights in order to protect this unusually sensitive battlefield site. Scottish Ministers have applied a planning condition which will restrict certain development on the steading or within its curtilage which may otherwise have been carried out under permitted development rights. Specifically, other development within the garden/curtilage of the dwelling house incidental to its enjoyment and domestic microgeneration equipment.

10. It is understood from the report that the appellant has not objected to a condition of this nature if it is considered necessary. Ministers consider there is great sensitivity around the issue of new developments encroaching onto sensitive battlefield sites, especially at Culloden. Ministers agree with the Reporter's reasoning and consider that a condition to restrict certain types of development without planning permission is necessary. Ministers have amended the Reporter's planning condition 2, to specify the development types that are to be restricted without further planning permission. This is in order to protect the site from new development that may have significant adverse impacts on the character and appearance of the conservation area, the setting of the building, any archaeological remains and the special landscape characteristics of Culloden Battlefield.

Developer Contributions

11. Scottish Ministers agree with the Reporter in paragraph 5.80 that a section 75 planning obligation would not be appropriate in this instance due to the relatively modest sum involved. The Council had agreed with the applicant that the required contribution (£1,175) in total would be paid upfront, prior to the issue of any planning permission. This is not possible as the application is currently with Ministers.

Therefore, the Reporter has recommended a Grampian style planning condition which would provide a mechanism for the authority to secure payment of the contributions towards education infrastructure before development can commence. Ministers have amended the Reporter's planning condition 1 to specify the index linked payment required in line with the Council's supplementary guidance on Developer Contributions.

Scottish Planning Policy

12. Paragraph 33 of Scottish Planning Policy (SPP) states that where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration. Decision-makers should also take into account any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the wider policies in this SPP. The same principle should be applied where a development plan is more than five years old.

13. As the Highland-wide Local Development Plan (which contains the relevant policies) is more than five years old, Ministers are applying the principle set out in paragraph 33 of SPP. Ministers consider that the proposed development is development that contributes to sustainable development, and regard the presumption in favour of such development as a significant material consideration in this case.

14. Ministers consider that the sensitive restoration and conversion of the steading to domestic use would protect and enhance the natural and cultural heritage of the area and would support good design. For the reasons summarised above and in the Reporter's report, Scottish Ministers consider that the Proposed Development would be a sustainable development, and would represent "the right development in the right place" as expected by paragraph 28 of SPP.

15. The draft Fourth National Planning Framework (NPF4) was issued on 10 November. National Planning Framework 3 and Scottish Planning Policy will remain in force until NPF4 is adopted. Whilst the draft NPF4 is a material consideration, Ministers give it limited weight in the determination of this application given its consultation draft status.

Formal Decision

16. Accordingly, for the reasons set out in the Reporter's report and as summarised above, Scottish Ministers hereby grant planning permission subject to the conditions set out in Appendix 1 to this letter.

17. The decision of Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of The Town and Country Planning (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date hereof. On any such application the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the appellant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of



the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

18. A copy of this decision letter and the report has been sent to The Highland Council. Those parties who lodged representations will also receive a copy of this letter.

Yours sincerely,



Fiona Simpson
Chief Planner

APPENDIX 1: Recommended Planning Conditions

Provision of education infrastructure

1. The approved development shall not commence until after the developer has paid The Highland Council the undernoted contributions towards education infrastructure. The payments should be confirmed in writing and submitted to the planning authority for approval. All contributions are to be indexed-linked from the date of this permission to the date of payment using the BCSI All-in TPI index. The following contributions are sought:

- £434 towards the build costs of a classroom extension to Balloch Primary School; and
- £741 towards the build costs of a new Culloden Secondary School.

Reason: To ensure the appropriate provision of education infrastructure.

Residential permitted development

2. The following development shall not take place (on the dwelling house or within the curtilage of the dwelling house) without first obtaining planning consent from the Local Planning Authority:

- ancillary buildings such as sheds, garages, sun houses, garden rooms, greenhouses and storage buildings of any size within the curtilage of the dwelling house;
- erection, construction, maintenance or improvement of any deck or raised platform within the curtilage of the dwelling house;
- installation, alteration or replacement of a flue forming part of a combined heat and power system, heating and heat pump systems on a dwelling or within the curtilage of a dwelling house;
- installation, alterations or replacement of freestanding wind turbines, free standing solar panels, air source heat pumps on a dwelling or within the curtilage of a dwelling house;

Reason: To safeguard the character, appearance and setting of the building to be converted, any archaeological remains and the historic battlefield designation.

Archaeology

3. Development or work (including site clearance, installation of a site compound, stripping back of the courtyard, provision of access and parking, installation of the septic tank and soakaway and undergrounding of cables and pipes) shall not commence until proposals for an archaeological watching brief, to be carried out during site clearance and excavation works, has been submitted to, and approved in writing by, the planning authority. This is to include measures to ensure all spoil is scanned by metal detector. The brief shall take full account of the recommendations in the archaeological investigation report (April 2019), including proposals for the

preservation, recording and interpretation of any archaeological finds and be prepared in line with The Highland Council's Standards for Archaeological Work. Thereafter, the watching brief shall be implemented as approved.

Reason: In order to protect the archaeological and heritage interest of the site.

4. The graffitied wooden panel referred to in the archaeological investigation report shall be preserved and reused in the conversion in a way to be approved in advance of works and in writing by the planning authority.

Reason: In order to protect the archaeological and heritage interest of the site.

Protected species

5. Development shall not commence before the developer has submitted mitigation and compensatory proposals based on the measures identified in the Species Protection Plan (August 2019 and as subsequently updated) for the consideration and written approval of the planning authority. Thereafter, the development shall be undertaken in accordance with the agreed details.

Reason: In the interests of reducing risks to protected species.

Site compound

6. No development shall commence until full details of any temporary site compounds and storage areas (including their location, scale and means of enclosure) shall be submitted to, and approved in writing by, the planning authority. Thereafter, the site compounds and storage areas shall be formed in accordance with the approved details. Furthermore, all site compounds shall be maintained in a tidy, safe and secure fashion and be removed from the application site within one month of the development being completed.

Reason: To ensure that the site compounds are sensitively located and are adequately secured to prevent unauthorised entry.

Design and Materials

Stonework restoration

7. Development shall not commence before the appellant has prepared a one metre square panel of picked and re-pointed stonework for inspection by the planning authority to demonstrate the standard of work to be carried out in restoring the walls of the steading. The remaining picking and re-pointing shall be carried out in accordance with the standard approved in writing by the planning authority, unless otherwise agreed in writing with the planning authority.

Reason: To safeguard the character and appearance of the building to be converted.

Retention of stone features

8. All existing stone features such as lintels, cills, quoins and copes shall be retained in situ unless written consent to replace individual features is granted by the planning authority. As far as possible, replacements for any existing feature stones must match the existing stones to the prior written satisfaction of the planning authority.

Reason: To safeguard the character and appearance of the building to be converted.

Retention of external stone staircase

9. Development shall not commence before the developer has submitted proposals for the consideration and written approval of the planning authority showing the retention and refurbishment of the external stone staircase on the north elevation of the steading. The staircase shall then be restored in accordance with the approved proposals, unless otherwise agreed in writing with the planning authority.

Reason: To safeguard the character and appearance of the building to be converted.

Air source heat pump and flues

10. Development shall not commence before the developer has submitted proposals for the consideration and written approval of the planning authority showing the proposed external finish to the air source heat pump and flues. These proposals shall be designed to minimise the visual impact of this equipment. The pump and flues shall then be finished in accordance with the specification approved.

Reason: To safeguard the character and appearance of the building to be converted.

Doors, windows and rooflights

11. Development shall not commence before the developer has submitted detailed specifications of all windows and doors and window and door surrounds, first floor glazed safety screens, the glazed hallway and rooflights, which must be to a conservation specification, for the consideration and written approval of the planning authority. These features shall then be installed in accordance with the approved proposals.

Reason: To safeguard the character and appearance of the building to be converted.

Roofs

12. All serviceable roofing slates shall be preserved and reused in the conversion. As far as possible, any replacement slates must match the existing slates to the prior written satisfaction of the planning authority.

approved scheme shall be implemented prior to the first occupation of the house and thereafter maintained in perpetuity.

Reason: In the interests of road safety.

Site boundaries

18. The stone dykes on the site boundary shall be retained, protected from damage during construction by the use of temporary fencing and repaired. Prior to the occupation of the house, a one metre length of repaired dyke shall be prepared for inspection by the planning authority to demonstrate the standard of repair work to be carried out. The dykes shall then be repaired in accordance with the standard approved in writing by the planning authority.

Reason: To safeguard the setting of the building to be converted.

19. Proposals for any new or replacement boundary fencing, which must be of a rural not suburban specification, must be submitted for the consideration and written approval of the planning authority. The fencing shall then be erected in accordance with the approved proposals.

Reason: To safeguard the setting of the building to be converted.

Landscaping

20. Existing trees and shrubs shall be retained unless prior written consent for their removal is received from the planning authority. No development shall commence until the developer has submitted proposals for the protection during construction of trees and shrubs to be retained and for the planting and establishment of any additional tree and shrub planting for the written consideration and approval of the planning authority. The protection measures and any new planting shall then be implemented in accordance with the approved proposals.

Reason: To safeguard the setting of the building to be converted.

APPENDIX 2: Recommended Advisory Notes

1. Length of the permission:

This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (see section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. Notice of the start of development:

The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (see sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. Notice of the completion of the development:

As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (see section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).



Decision by Steve Field, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2257
- Site address: 5 West Heather Road, Inverness, IV2 4WS
- Appeal by Miss Lynne Cordiner against the decision by The Highland Council
- Application for planning permission 21/02073/FUL dated 28 April 2021, refused by notice dated 23 August 2021
- The development proposed: conversion of existing garage to form ancillary accommodation
- Application drawings: listed in schedule at the end of this decision notice
- Date of site visit by Reporter: 30 October 2021

Date of appeal decision: 23 December 2021

Decision

I allow the appeal and grant planning permission. Attention is drawn to the three advisory notes at the end of the notice.

Preliminary matter

I have dealt with the appellant's claim for an award of expenses in a separate decision notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan that relates to this site comprises the Highland-wide Local Development Plan 2012 and the Inner Moray Firth Local Development Plan 2015. There are no specific policies in the Inner Moray Firth plan relevant to this appeal although the appeal site falls within the South Inverness Settlement Development Area defined in the plan. Having regard to the provisions of the Highland-wide plan, the main issues in this appeal are whether the proposed development is acceptable in terms of policies relating to design and placemaking, car parking and settlement development areas. I consider these issues below.

(i) Design and placemaking

2. Highland-wide Local Development Plan (the LDP) Policy 28 Sustainable Design provides support for developments which promote and enhance the social, economic and environmental wellbeing of the people of Highland. Proposed development will be assessed in relation to 13 criteria. Developments judged to be significantly detrimental in



terms of these criteria will not accord with the LDP.

3. I set out below my view on the extent to which the proposed development meets the 13 criteria:

- There is no evidence that the proposals would be incompatible with public service provision such as drainage, education, road or water supply capacity. A new wastewater connection would be required.
- The appeal site is accessible by bus, cycling and walking as well as by car. The site connects to established footpath and cycling provision in the city, including the Slackbuie Avenue to Castle Heather Drive cycle route. There is a bus stop on Slackbuie Avenue, within 400 metres of the site, providing a service to the city centre.
- The proposals entail the conversion of an existing building to provide two habitable rooms. The proposed south facing windows to the ground floor living space would provide passive solar gain. Compliance with building standards would ensure energy efficiency is maximised overall.
- The appeal site is not adversely affected by proximity to any of the constraints set out in the council's Physical Constraints on Development Supplementary Guidance such as contaminated land, flood risk or proximity to woodland.
- The proposed development makes use of an existing building, currently a detached garage and games room.
- As the proposed conversion of a small, one and a half storey building, waste generation during construction would be minimal.
- I consider that the design and location of the proposed development are such that it would not have any adverse impact on residential amenity due to loss of daylight, sunlight or privacy. I deal with issues of impact on residential amenity arising from the potential use of the appeal site for short-term holiday lets or potential use as a separate house below.
- There would be no impact on non-renewable resources such as mineral reserves, prime agricultural land or approved transportation routes.
- There would be no impact on built or natural heritage resources.
- The principal proposed external alterations to the building would be relocating a door from the north-west elevation to the south-west elevation, replacing the garage doors in the south-east elevation with windows and the installation of three rooflights on the north-west elevation. All these changes would be in keeping with the residential character of the area.
- There is a limit to what a proposed householder development such as this can do to enhance community safety but the proposed windows in the south-east elevation would improve surveillance of the street.
- Similarly, I would not expect a proposed development of this nature to accommodate the needs of all sectors of the community.
- The proposed development would provide some building work and would have a very modest impact on local housing choice but I consider that the requirement to contribute to the economic and social development of the community is aimed at large scale proposals.

4. Policy 28 also requires that development proposals must demonstrate compatibility with the council's Sustainable Design Guide: Supplementary Guidance. This forms part of the adopted LDP and is a material consideration in this appeal. The supplementary guidance requires that development should:

- conserve and enhance the character of the Highland area;
- use resources efficiently;
- minimise the environmental impact of development; and
- enhance the viability of Highland communities.

5. The guidance includes a sustainable design checklist for use in assessing whether proposals meet minimum standards required by the council. This comprises 20 elements. The guide indicates that the size and scale of the proposed development will influence the level at which each issue is considered. That is a factor in this case where the conversion of a relatively small building places some limitations on the extent to which the proposals can reasonably be expected to contribute to sustainable design. I consider that my comments above in relation to the first part of Policy 28 address the following issues set out in the checklist:

- layout, scale, proportions, materials, construction and finishing;
- materials;
- natural heritage;
- energy efficiency;
- renewable energy;
- foul water treatment;
- waste and recycling;
- pedestrians and cyclists;
- efficient use of land and existing buildings; and
- design for flexibility.

6. My comments on compliance with the remaining issues in the checklist are as follows:

- Existing landscaping on the site would be retained. The building that would be converted is existing and additional planting is not required to soften its visual impact or assist with integration into the cul-de-sac. The scale of the development does not justify additional open space provision.
- There would be no impact on cultural heritage.
- The majority of materials are existing but there would be some opportunity to utilise sustainable materials in the conversion.
- There is no evidence of flood risk to the site.
- The conversion would connect to the sustainable urban drainage provision for the existing house and garage whilst not increasing runoff above existing levels.
- There would be opportunities to install water-efficient appliances and rainwater collection in undertaking the conversion.
- As the conversion of a small, free-standing building, I would expect the impact on neighbours and the environment to be modest and short-term.
- I find below that the proposals meet LDP Policy 57 Travel.
- The conversion would benefit from the existing private amenity space at the appeal site.

- Accessibility to health services, schools, shops, financial services and leisure facilities would be good given the urban location of the site.

7. Policy 28 requires that compatibility with the sustainable design guide should be demonstrated through the submission of a sustainable design statement, where required. The guidance suggests that this would only be required for proposed householder development in sensitive situations such as in a conservation area or within the curtilage of a listed building so would not be required in connection with the appeal proposals.

8. Additionally, the policy highlights the need for all developments to comply with the greenhouse gas emissions of the sustainable design guide. I am satisfied that matters relating to energy efficiency and renewable energy would be dealt with through the building standards process.

9. Overall, I consider that the proposed development would not be significantly detrimental in terms of the criteria set out in Policy 28 and demonstrate compatibility with the sustainable design guide supplementary guidance. Consequently, I find that the proposals would comply with LDP Policy 28.

10. LDP Policy 29 Design Quality and Placemaking is also relevant to this part of my assessment. This requires that development should be designed to make a positive contribution to the architectural and visual quality of the place in which it is located, where appropriate, and should consider the incorporation of public art. Applicants should demonstrate respect towards the local distinctiveness of the landscape, architecture, design and layouts in their proposals. Design and layout should focus on the quality of places and living environments for pedestrians rather than movement of vehicles and should incorporate the six qualities of successful places. I provide an analysis below of the extent to which the appeal proposals demonstrate these six qualities.

11. The proposals would adapt a building for ancillary residential use which is clearly designed as part of the development of 10 detached houses in West Heather Road. As such, it would complement the local street and building form. The proposed windows in the south-east elevation would overlook the street, providing additional natural surveillance. Number 5 West Heather Road is situated in an area of shared vehicle and pedestrian road space. This layout, at the end of the cul-de-sac, is designed to prioritise pedestrian movement and would not be disturbed by the proposals. I consider the proposed development would contribute to creating a safe and pleasant place. Welcoming development helps people to find their way around. The proposed conversion would contribute to this by creating a home distinct from the others in the street whilst retaining unifying design features and materials. The council's Public Art Strategy supplementary guidance does not require provision of public art as part of householder developments.

12. The proposals take account of how people use places differently and contributes to the local mix of house types whilst integrating with the existing development. I consider that this demonstrates some of the characteristics of adaptable development. In using an existing building and creating a denser development, sharing infrastructure with the adjacent site, the proposals show efficient use of resources. The location of the site in relation to pedestrian and cycle routes and public transport offers active travel choices which would help to make the development easy to move around and beyond.

13. In so far as it is reasonable to expect a two-room, ancillary residential development to do so, I consider that the proposed development addresses the six qualities of successful places. Therefore, I find that it would comply with LDP Policy 29.

(ii) Car parking

14. LDP Policy 56 Travel requires development proposals to incorporate an appropriate level of parking provision having regard to the travel modes and services which will be available, key travel desire lines and the maximum parking standards set by the council. The community council and neighbours have expressed concern that the three off-street parking spaces proposed would not be adequate for what would become a six-bedroom house if the garage was converted into additional living space. I note from the planning manager's report to committee that proposed parking provision would meet the council's standards for a six-bedroom house. It appears from the representations that much of this concern relates to alleged use of the property for short-term holiday lets. The council officer advised elected members that this would be adequate even if the house is used as short-term let. I have set out my comments on this issue below.

15. I have no evidence that the proposed parking provision would not meet the council's guidelines. Given my comments above regarding the availability of active travel choices I consider that three off-street spaces would be reasonable provision. Although not ideal in terms of the outlook from the proposed living space, the existing drive area between the garage and road could be used as short-term visitor parking, if required. Having found that the proposed parking meets the council's standards, I also consider that there would be no detrimental impact on the issues raised by neighbours in relation to access and road safety.

16. I find that the proposed development would comply with Policy 56.

(iii) Settlement development areas

17. The area planning manager's report draws attention to the location of the appeal site within the South Inverness Settlement Development Area. As such, LDP Policy 34 Settlement Development Areas is a relevant consideration. The first part of Policy 34 provides support for proposals within settlement development areas if they meet the requirements of Policy 28 Sustainable Design and other relevant policies of the plan. Having found that the proposals comply with Policy 28 and Policies 29 and 56, as the other policies I have identified as being relevant, I also consider that they would comply with the first paragraph of Policy 34.

18. The second paragraph of Policy 34 requires that proposals are judged in terms of how compatible they are with the existing pattern of development, how they conform with existing and approve adjacent land uses and the effect on any natural, built and cultural heritage features. The proposed development entails the conversion of a garage into additional living space for the adjoining house in a residential area and would have no impact on any heritage features. As such, I consider it would also comply with the second part of Policy 34 and, therefore, with Policy 34 overall.

Other considerations

19. Letters of representation received by the council and Division of Planning and Environmental Appeals, including from the community council, refer to a number of issues which I do not consider to be material considerations for the purposes of determining this appeal. However, in order that those making these points can see how their representations have been dealt with, I have commented on these matters in the following paragraphs.

(i) Use as short-stay commercial visitor accommodation

20. There is concern that the proposed development will exacerbate the detrimental impact on residential amenity caused by the alleged current use of the house at 5 West Heather Road as a short-term holiday let by reason of disturbance, access and parking issues.

21. If, as alleged, and accepted by the council, the proposed and/or existing accommodation is used as short-stay commercial visitor accommodation, it is for the council to decide whether that use falls within Class 9 of The Town and Country (Use Classes) (Scotland) Order 1997, which relates to houses, or if it involves a material change of use requiring planning permission. This does not rely on any future decision to include the appeal site in a short-term let control area or the introduction of the short-term let licensing scheme in 2022, both measures referred to in representations.

22. Consideration as to whether a material change of use requiring planning permission has taken place will be a matter of fact and degree in relation to any particular property. The outcome of this assessment will depend on consideration of matters referred to in representations such as the frequency and pattern of lettings, the number of people staying, relationship with adjoining properties, which might include impact on parking provision, any anti-social behaviour, provision of services and the extent of any effective mitigation by the landlord.

23. The council's report on handling sets out the planning manager's view that no change of use would be involved if the existing house and the proposed annexe are used for short-stay commercial holiday letting. That is an assessment made for the guidance of elected members in anticipation of the garage conversion taking pace and the residential space created being used for that purpose. However, the impact cannot be judged fully until any such use takes place. It is not possible for me to anticipate the outcome of any assessment at that time. That is a matter for the council. I have gone into the detail I have as this appears to be the main issue for neighbours who will wish to understand why I have not supported their objections on this matter. However, this is not an issue within the ambit of the appeal against the refusal of planning permission for the proposed conversion of the garage to ancillary accommodation.

24. There is also a suggestion that the house is used as a bed and breakfast establishment. Use of more than two bedrooms in either the existing or extended property for that purpose would require planning permission. However, that is not a matter which is the subject of this appeal. I also note that a short-term holiday let is not classified as a house in multiple occupation in planning terms.

(ii) Use as a separate house

25. There is also concern from some of those who have submitted representations that the proposals will lead to the creation of a separate dwelling, not in character with the rest of the street. Potential use of the proposed conversion as a separate house would require planning permission. I note that proposed use of the proposed garage as a separate house was the subject of a previous refusal of planning permission but that is not a matter covered by this appeal.

26. In making his report to the council's planning committee on the appeal proposals, the planning manager recommended that planning permission be granted subject to a condition that 'the self-contained accommodation hereby approved shall be used solely as accommodation ancillary to the main dwelling house and no other use'. In deciding to refuse planning permission, elected members felt that such a condition could not be enforced successfully.

27. In support of this view, the council refers to Scottish Government Planning Circular 4/1998: the use of conditions in planning permissions. The circular states that conditions should only be imposed where they meet six tests. The tests are whether the condition is necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. In particular, the council refers to paragraph 26 which relates to the practicality of enforcement.

28. Paragraph 26 of the circular states that sometimes a condition will not be enforceable because, in practice, it is impossible to detect an infringement or, more commonly, it will merely be difficult to prove a breach of its requirements. The circular illustrates this point with the example of a condition imposed for traffic reasons restricting the number of persons resident at any one time in a block of flats which would be impracticable to monitor and would pose severe difficulties in proving an infringement. The council considers that, in the case of the appeal site, unless officers stake out the property, interview occupants of the main house and converted garage or regularly scrutinise rental records, it would be impossible to detect an infringement and be difficult to prove a breach of the condition. On that basis, the committee felt the application should be refused.

29. My view is that it would be relatively straightforward for a council enforcement officer to prove any use of the proposed garage conversion as a separate house. Service of a planning contravention notice under section 125 of the Town and Country Planning (Scotland) Act 1997 could require owners and occupiers to advise the council of any use of the land for any purpose specified in the notice, when that use began and to provide the name and address of any person known to have used the land. If, after 21 days, the recipient fails to comply with the notice, or provides a false or misleading response, they would be guilty of an offence. If this process showed that the garage conversion was being used as a separate house, the owner could be required to apply for retrospective planning permission failing which, the council could serve an enforcement notice. Therefore, I consider that any future breach of planning control in this regard would be enforceable and would not depend on the use of the condition recommended by the council's planning manager.

30. The appellant has questioned whether the recommended condition would meet the first test in the circular, which is whether it would be necessary. Paragraph 13 of the

circular indicates that, in considering whether a particular condition is necessary, it is important to ask whether planning permission would have to be refused if that condition were not to be imposed. I have found above that permission would not have to be refused were the recommended condition not attached to any approval.

31. Paragraph 13 also states that, if permission would not have to be refused without the condition in question, the proposed condition would require special and precise justification. The recommended reason for the condition is 'to ensure that the development does not become used as a separate dwellinghouse, in recognition of the lack of private amenity space and in accordance with the use applied for'. As this effectively does no more than indicate some of the reasons why planning permission would be required, I do not consider it provides the special and precise justification required by the circular.

32. It seems to me that the main purpose of the recommended condition is to highlight the council's concern about any potential breach. As the circular also states that the argument that a condition would do no harm is not justification for its imposition, I consider that this cannot be regarded as justification for its imposition.

33. Drawing these considerations together, I find that the recommended condition would not meet this first test in the circular.

34. In conclusion on this issue, I find that, as the proposed development relates to the conversion of the garage for residential use ancillary to the main house, consideration of whether it would be acceptable to use this building as a separate house is outwith the scope of this appeal. Any such use would require planning permission and, if that is not obtained, the council could take enforcement action against the developer. I do not believe any such change of use would be difficult for the council's enforcement officer to detect or prove. I also find that whilst, in that sense, the condition recommended by the planning officer would be enforceable, it is not actually necessary.

(iii) Title deeds

35. Neighbours advise that the title deeds for 5 West Heather Road preclude use of the house for business purposes or occupation by more than one family. Enforceability of burdens on land is governed by the provisions of the Title Conditions (Scotland) Act 2003 and does not fall within the ambit of this appeal.

36. It is also suggested that the existing garage encroaches on the garden ground of the adjoining house at 4 West Heather Road. Any discrepancy in this regard would be a legal matter between the property owners.

37. Similarly, it is suggested that the proposed westward extension of the driveway would be located above a water main. I think it unlikely that a gravel drive would cause a problem in this regard but, if so, that would be a matter for Scottish Water.

(iv) Building standards

38. It is suggested that the upper floor of the existing garage has not been built to habitable standards. The appeal proposals would require a building warrant. The application for a building warrant would enable the council's building standards officer to

ensure that the proposed development is constructed in accordance with the building regulations. This is not a matter for this appeal.

Overall conclusion

39. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would justify refusing to grant planning permission.

40. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Steve Field

Reporter

Schedule of drawings

PL001 revision A - Location plan
PL002 revision A – Site plan – existing
PL003 revision A – Site plan – proposed
PL004 – Existing garage
PL005 – Proposed annexe floor plans and elevations

Conditions

None.

Advisory notes

1. The length of the permission

This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. Notice of the start of development

The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. Notice of the completion of the development

As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).



Claim for an Award of Expenses Decision Notice

Decision by Steve Field, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2257
- Site address: 5 West Heather Road, Inverness, IV2 4WS
- Claim for expenses by Miss Lynne Cordiner against The Highland Council
- Date of site visit by reporter: 30 October 2021

Date of decision: 23 December 2021

Decision

I find that the council has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

Preliminary matter

My decision on the merits of the appeal to which this claim relates is issued separately.

Reasoning

1. Scottish Government Circular 6/1990 Award of expenses in appeals and other planning proceedings provides that awards of expenses do not follow the decision on the planning merits and are only made where each of the following tests is met:

- the claim is made at the appropriate stage of the proceedings;
- the party against whom the claim is made has acted unreasonably; and
- this unreasonable conduct has caused the party making the application to incur unnecessary expense, either because it should not have been necessary for the case to come before the Scottish Ministers for determination or because of the manner in which the party against whom the claim is made has conducted its side of the proceedings.

2. In relation to the first test, the claim was made within the time allowed for the appellant to comment on representations made on the appeal to the Division of Planning and Environmental Appeals so was made at the appropriate stage of the proceedings.

3. In relation to the first ground for the appellant's claim, I consider that the council's reason for refusal is complete and precise in that it explains the council's concern relates to adverse impact on residential amenity resulting from increased activity associated with the house. I also consider that it is relevant in that it is founded on local development plan Policy 28 Sustainable Design, the seventh criterion of which states that proposed development will be assessed on the extent to which it would impact on individual and community residential amenity.

4. The council supported its reason for refusal in its appeal response. The key point of the council's response was to explain that elected members considered that the condition recommended by the planning manager which states that the proposed ancillary accommodation shall be used solely for that purpose was unenforceable. The committee considered that planning permission could not be granted without a condition to this effect so decided it had no alternative other than to refuse planning permission. I came to a different conclusion but I consider that the council supported its reason for refusal adequately and showed it had reasonable grounds for its decision

5. I find that the claim fails on the first ground.

6. In relation to the second ground, I consider that, in coming to their decision, elected members had before them a report from the area planning manager which summarises opposition to the proposals in the form of five representations submitted by local residents but also describes the site and the proposed development, explains the section 25 requirement to determine applications in accordance with the development plan unless material considerations indicate otherwise, sets out relevant development plan policy, provides guidance on key issues, including impact on residential amenity, highlights material considerations raised in representations, including issues of road safety, and draws attention to what are considered by the officer to be non-material considerations.

7. Consequently, I consider that, whilst local opposition was a factor in the council's determination of the application, the decision was made in accordance with section 25 of the Act, taking account of representations which raised material considerations.

8. I find that the claim fails on the second ground.

9. In relation to the third ground for the claim, I consider that the conclusions I have come to above in relation to the issues raised in representations, conformity with the development plan and the balance evident in the decision-making process, indicate that the council had reasonable planning grounds for reaching its decision.

10. I find that the claim fails on the third ground.

11. In conclusion on the second test in the circular, although I came to a different conclusion on the council on the evidence, I find that the council's decision to refuse planning permission for the reason set out in its decision notice does not amount to unreasonable behaviour.

12. On that basis, it is not necessary for me to consider whether the appellant incurred unnecessary expense in relation to the third test in Circular 6/1990.

13. Therefore, I decline to award any expenses to the appellant.

Steve Field

Reporter



Decision by Chris Norman, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-270-2036
- Site address: Cherry House Caravan, Farr, Inverness IV2 6XG
- Appeal by Salar Ali, against the enforcement notice dated 7 May 2021 served by The Highland Council
- The alleged breach of planning control: The unauthorised engineering of the land to form a hardstanding and an access to the C1068 classified road and the siting upon the land of a static caravan and sheds without the required planning permission (section 123(1)(a) of the Act: (the breach of planning control).
- Date of site visit by Reporter: 25 September 2021

Date of appeal decision: 6 January 2022

Decision

I dismiss the appeal and I direct that the enforcement notice dated 7 May 2021 be upheld. Subject to any application to the Court of Session, the enforcement notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Act.

Reasoning

1. The appeal against the enforcement notice was made solely on the following ground as provided for by section 130(1)(f) of the Town and Country Planning (Scotland) Act 1997:

Ground (f) - the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control stated in the notice, or to remedy any injury to amenity caused by that breach.

Ground (f) – the steps required by the notice are excessive

2. Enforcement Notice 20/00378/ENF (the enforcement notice) was issued by the Highland Council (the council) because it considered it expedient to do so as the unauthorised engineering of agricultural land to form an area of hardstanding, the access onto the adjacent classified road and the siting on the land of a static caravan and sheds is unauthorised development that is a breach of planning control.

3. The enforcement notice relates to agricultural land (the land) adjacent to, and east of, the C1068 public road in open countryside some seven kilometres south of Inverness. Development comprising the importation of a coarse aggregate material has been

deposited on the land to form an area of hardstanding which includes a vehicular access directly to the adjoining C1068. A static caravan is located on the south-eastern part of the land and two timber sheds are contiguous with its northern boundary. Adjoining the caravan's eastern elevation an area of timber decking supports a wooden framework and separates the caravan from a grassed area which appears to be used as garden ground. On the day of my site inspection a stockpile of inert material was located north of the caravan. The enforcement notice requires the removal of all of the unauthorised development and the reinstatement of the land.

4. The council contends that the caravan and sheds have been sited upon agricultural land in excess of 28 days without planning permission, and contrary to part 2, part 4 and part 6 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the 1992 Order). Additionally the hard standing and vehicle access to the adjacent C1068 have been formed without prior notification, planning permission and without a road opening consent from the council. The council contends that the unauthorised development is not for the purpose of agriculture.

5. In submitting the appeal the appellant refers to planning application 21/00465/FUL that he submitted to the council for the erection of a single-storey house and garage on the land. Nevertheless it is not open to me in determining this enforcement notice appeal to consider the merits or otherwise of the proposal for a house on the site. The caravan was intended to provide temporary accommodation for the appellant and his family, pending the completion of the house. Following the council's decision to refuse the planning application in May 2021 the appellant sought a review of that decision from the council's local review body. At its meeting on 24 August 2021 the local review body decided to dismiss the notice of review. Consequently there is no planning permission in place for the erection of a dwellinghouse on the land.

6. Against this background I am in no doubt that the formation of the hardstanding, the vehicular access, the caravan and the sheds on the land comprise development for the purposes of section 26 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act). Under section 28 of the 1997 Act planning permission is required for carrying out the development. The enforcement notice requires that, within a period of three months, the static caravan, all sheds and the hardstanding, and all associated materials, are to be removed from the land. Thereafter the site requires to be grubbed up to allow the natural regeneration of the former agricultural land. I conclude that these works, as specified in part 4 of the enforcement notice are the minimum necessary to remedy the breach of planning control. The repeal of section 130(1)(a) of the 1997 Act does not allow me to grant planning permission for the unauthorised development referred to in the enforcement notice. Consequently the appeal under ground (f) fails.

Conclusion

7. The steps that are required to be taken by the enforcement notice are necessary to remedy the breach of planning control that is extant on the land. I have considered all of the other matters raised but there are none which would lead me to alter my conclusions.

Chris Norman

Reporter